

**Product Reseller Agreement**

by and between

BERND FRIEDLANDER LLC  
205 De Anza Blvd., #91, San Mateo, CA 94402

and

\_\_\_\_\_  
(NAME)

\_\_\_\_\_  
\_\_\_\_\_  
(Mailing Address)

(1) \_\_\_\_\_  
(Type of Legal Entity and State of Organization)

OR

(2) \_\_\_\_\_  
(State of Licensure and Practitioner License Number)

\_\_\_\_\_  
(Name of Key Contact Person)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Email)

\_\_\_\_\_  
EFFECTIVE DATE

IN WITNESSS WHEREOF, the Parties have caused this Agreement to be executed by a duly authorized representative to be effective as of the date above stated:

BERND FRIEDLANDER, LLC  
"Supplier"

\_\_\_\_\_  
"Reseller"

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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## PRODUCT RESELLER AGREEMENT

This Product Reseller Agreement ("**Agreement**"), dated as set forth on the title page, is entered into by and between Bernd Friedlander, LLC, a California Limited Liability Company having its principal mailing address at 205 De Anza Blvd., #91, San Mateo, CA 94402 ("**Supplier**") and the company identified on the title page (hereinafter, "**Reseller**", and together with Supplier, the "**Parties**", and each, a "**Party**").

### RECITALS

WHEREAS, Supplier is in the business of wholesale sales of the Products (as defined below) to qualified resellers;

WHEREAS, Reseller wishes to qualify to purchase the Products from Supplier and resell such Products to End Users (as defined below), subject to the terms and conditions of this Agreement; and

WHEREAS, Reseller desires to purchase from Supplier, and Supplier desires to sell to Reseller the Products described in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I DEFINITIONS

Capitalized terms have the meanings set forth or referred to in this Section, or in the Section in which they first appear in this Agreement.

"**Confidential Information**" has the meaning set forth in **Article XV**.

"**Delivery Point**" means the street address specified in the applicable Purchase Order.

"**Effective Date**" means that date set forth on the title page.

"**End User**" means the final purchaser that (a) has acquired a Product from Reseller for (i) its own internal use and not for resale, remarketing or distribution or (ii)

incorporation into its own products and (b) is an individual or entity, other than any federal, state or local agency, office or division, located in the Territory.

**"Intellectual Property Rights"** means all [intellectual property and industrial property rights comprising or relating to/of the following]: (a) Patents; (b) Trademarks; (c) internet domain names, whether or not Trademarks, registered by any authorized private registrar or Governmental Authority, web addresses, web pages, website and URLs; (d) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, [application programming interfaces, architecture, files, records, schematics,] data, data files, and databases and other specifications and documentation; (e) Trade Secrets; [(f) [semiconductor chips, mask works and the like;] and [(f)][(g)] all other intellectual property and industrial property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the Laws of any jurisdiction throughout in any part of the world.

**"Minimum Purchase Commitment"** means the minimum purchase commitments as set forth herein, on Supplier's Website, Supplier price lists, and as Supplier may periodically set in its sole discretion.

**"Nonconforming Goods"** means any product received by Reseller from Supplier pursuant to a Purchase Order that: (a) does not conform to the product listed in the applicable Purchase Order; or (b) on visual inspection, Reseller reasonably determines are otherwise defective. Where the context requires, Nonconforming Goods are deemed to be Goods for purposes of this Agreement.

**"OFAC"** means the Office of Foreign Assets Control of the US Treasury Department.

**"Products"** means those products that are identified on Supplier's Website, as Supplier may amend in its sole discretion from time to time.

**"Purchase Order"** means Reseller's then-current standard form purchase order as provided electronically on the Website.

**"Reseller"** has the meaning set forth in the preamble of this Agreement.

**"Supplier's Intellectual Property Rights"** means all Intellectual Property Rights owned by or licensed to Supplier.

**"Supplier's Trademarks"** means all Trademarks owned or licensed by Supplier as used on Supplier's Products, Supplier's Website and all advertising and marketing materials for the Products.

“Supplier’s Website” or “Website” shall mean the web site operated [www.drfriedlander.com](http://www.drfriedlander.com) or any such other site as Supplier may designate from time to time during the Term of this Agreement.

"**Territory**" means the geopolitical boundaries of the United States excluding protected territories and possessions.

"**Trademarks**" means all rights in and to US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, trade dress, corporate names and domain names and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

"**Trade Secrets**" means all inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures and other confidential and proprietary information and all rights therein.

## **ARTICLE II**

### **APPOINTMENT AS RESELLER**

**Section 2.01 Non-Exclusive Appointment.** Subject to (i) Supplier’s approval of prospective Reseller’s qualifications to act as an authorized Reseller for Supplier and (ii) the Terms of Use of Supplier’s Website and (iii) the terms of this Agreement: Supplier hereby appoints Reseller, and Reseller accepts such appointment, to act as a non-exclusive reseller of Products to End Users located in the Territory during the Term and the Post-term Resale Period solely in accordance with the terms and conditions of this Agreement. Supplier may in its sole discretion sell the Products to any other Person, including resellers, retailers and End Users in and outside the Territory.

**Section 2.02 Status as Independent Contractor.** The relationship between Supplier and Reseller is solely that of vendor and vendee. Nothing in this Agreement creates any agency, joint venture, partnership or other form of joint enterprise, employment or fiduciary relationship between the Parties or an employee/employer relationship. Reseller is an independent contractor pursuant to this Agreement. Neither Party has any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other Party to any contract, agreement or undertaking with any third party.

**ARTICLE III  
NO FRANCHISE AGREEMENT**

**Section 3.01 No Franchise Agreement.** The Parties acknowledge that this Agreement is not a franchise or business opportunity agreement and does not create a franchise or business opportunity relationship between the Parties. If any provision of this Agreement is deemed to create a franchise relationship or business opportunity between the Parties, then the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as a reseller agreement and not a franchise or business opportunity agreement.

**ARTICLE IV  
TERMS OF AGREEMENT PREVAIL OVER RESELLER'S PURCHASE ORDER**

**Section 4.01 Terms of Agreement Prevail Over Reseller's Purchase Order.** This Agreement is expressly limited to the terms of this Agreement, the Supplier Website Terms of Use and the Purchase Order Transaction Terms contained in the applicable Purchase Order. The terms of this Agreement prevail over any terms or conditions contained in any other documentation related to the subject matter of this Agreement and expressly exclude any of Reseller's general terms and conditions contained in any Purchase Order or other document issued by Reseller. In the event of any conflict between the terms of this Agreement, the Supplier Website Terms of Use and the terms of any Purchase Order or any other document issued by Reseller, the terms of this Agreement shall prevail.

**ARTICLE V  
GENERAL RESELLER PERFORMANCE OBLIGATIONS**

**Section 5.01 Marketing Products – Restricted Channels of Trade.** Reseller shall, in good faith and at its own expense:

(a) market, advertise, promote and resell the Products from Reseller's owned and/or operated retail clinics or stores (brick and mortar or proprietary web sites) to End Users located in the Territory consistent with good business practice, in each case using commercially reasonable efforts to resell the Products;

(b) only resell or offer to resell the Products that Reseller currently has in inventory or that have been ordered from Supplier (and which order has been accepted by Supplier as available for delivery to Reseller), unless Reseller has received prior written authorization from Supplier;

(c) observe all reasonable directions and instructions given to it by Supplier in relation to the marketing, advertisement and promotion of the Products to the extent that

such marketing materials, advertisements or promotions refer to the Products or otherwise use Supplier's Trademarks or other Intellectual Property Rights;

(d) in any and all contact between Reseller and any End User, Reseller must identify to the End User Reseller's full legal name, trade name, or both;

(e) market, advertise, promote and resell Products and conduct business in a manner that reflects favorably at all times on Products and the good name, goodwill and reputation of Supplier;

(f) promptly notify Supplier of any complaint or adverse claim about any Product or its use of which Reseller becomes aware; provided, that nothing in this Agreement requires Reseller to reveal proprietary pricing information; and

(g) upon request by Supplier, provide Supplier with a current and accurate list of all of its retail selling locations.

**Section 5.02 Authority to Perform Under this Agreement.** Reseller shall, at its own expense, maintain required certifications, credentials, licenses and permits necessary to conduct business in accordance with this Agreement.

**Section 5.03 Limited End User Support.** For the Term of this Agreement, Reseller shall, at its own expense:

(a) have sufficient knowledge of the industry and Products (including specifications, features and benefits as represented by Supplier only) so as to be able to explain in detail to the End Users the Products and the general use of the Product; and

(b) except as explicitly authorized in this Agreement or in a separate written agreement with Supplier, Reseller may not modify, alter, substitute, reverse engineer or otherwise change the Products it sells to End Users.

**Section 5.04 Government Approval.** If at any time during the Term or the Post-term Resale Period any notification, registration or approval is required for giving legal effect in any applicable jurisdiction to this Agreement or the transactions contemplated under this Agreement, Reseller shall:

(a) immediately take whatever steps may be necessary to properly notify, register or obtain approval;

(b) be responsible for any charges incurred in connection with notifying, registering or obtaining such approval; and

(c) keep Supplier currently informed of its efforts with respect to this **Section 5.04.**

Supplier will be under no obligation to ship any Products or other materials to Reseller under this Agreement until Reseller has provided Supplier with satisfactory evidence that such approval, notification or registration is not required or that it has been obtained.

**Section 5.05 Prohibited Acts.** Notwithstanding anything to the contrary in this Agreement, neither Reseller nor Reseller personnel shall:

(a) purchase Products except from Supplier's online fulfillment Website or other order fulfillment source as Supplier may expressly authorize from time to time, but nothing herein shall obligate or require Supplier to authorize the sale of Products to Reseller outside of Supplier's Website;

(b) offer for sale or sell Supplier's Products, directly or indirectly, through any third party brick and mortar retail store, third party online retail store or any retail store hosted on a third party platform, without the prior written consent of Supplier, which consent may be granted or withheld in the sole and absolute discretion of Supplier, with or without reason stated;

(c) make any representations, warranties, guarantees, indemnities, similar claims or other commitments:

(i) actually, apparently or ostensibly on behalf of Supplier, or

(ii) to any End User with respect to the Products, which representations, warranties, guarantees, indemnities, similar claims or other commitments are additional to or inconsistent with any then-existing representations, warranties, guarantees, indemnities, similar claims or other commitments in this Agreement or any written documentation provided by Supplier to Reseller;

(d) engage in any unfair, competitive, misleading or deceptive practices respecting the Products, including any product disparagement or "bait-and-switch" practices;

(e) sell, either directly or indirectly, or assign or transfer, any Products to any Person when Reseller knows or has reason to suspect that such Person may offer for resale or resell any or all of the Products to a third party, including any third party reseller or distributor;

(f) sell or show any Product to any third party, except for the express purposes of this Agreement;

(g) during the Term and the Post-term Resale Period manufacture, promote, market, sell or distribute Products using Reseller promotional information and material, unless such promotional information or material was provided or approved by Supplier pursuant to **Section 6.01(c)**.

**Section 5.06 Government Contracts.** Reseller shall not resell Products to any governmental authority or its respective agencies without express written approval from Supplier. Unless otherwise separately agreed to in writing between Supplier and Reseller, no provisions required in any government contract or subcontract related thereto shall be a part of this Agreement, imposed upon or binding upon Supplier, and this Agreement shall not be deemed an acceptance of any government provisions that may be included or referenced in Reseller's request for quotation, Purchase Order or any other document.

## **ARTICLE VI SUPPLIER PERFORMANCE OBLIGATIONS**

**Section 6.01 Supplier Performance Obligations.** During the Term and the Post-term Resale Period, Supplier shall:

- (a) provide any information and support in the Territory that may be reasonably requested by Reseller regarding the marketing, advertising, promotion and sale of Products sold to Reseller under this Agreement;
- (b) allow Reseller to participate in any marketing, advertising, promotion and sales programs that Supplier may make generally available to its authorized resellers of Products in the Territory, provided that Supplier shall have the right to alter or eliminate any such program at any time; and
- (c) approve or reject, in its reasonable discretion, any promotional information or material submitted by Reseller for Supplier's approval within ten (10) business days of receipt; and
- (d) provide to Reseller at no charge sample or other products that are not intended for resale ("**NFR Products**"). Reseller shall promptly return all NFR Products to Supplier on the expiration or earlier termination of this Agreement as provided for in **Section 14.05(c)(i)**. Supplier retains all rights, title and interest in and to all NFR Products before, during and after the Term].

## **ARTICLE VII AGREEMENT TO PURCHASE AND SELL THE PRODUCTS**

**Section 7.01 Terms of the Sale.** Supplier shall sell Products to Reseller at the Prices and on the terms and conditions set forth in this Agreement.

**Section 7.02 Availability/Changes in Products.** Supplier may, in its sole discretion:

- (a) discontinue the sale of the Products without advance written Notice thereof ;

- (b) effect changes to any of the Products; and

in each case, without obligation to modify or change any of the Products previously delivered or to supply new Products meeting earlier specifications.

## **ARTICLE VIII ORDERS PROCEDURE**

**Section 8.01 Non-binding Forecasts of Reseller Demand.** In the event Reseller has reason to believe that it will require more than a typical supply of Product for any given period, Reseller shall endeavor to provide Supplier a forecast of demand for the Products. The Forecasts are for information purposes only and do not create any binding obligations on behalf of either Party.

**Section 8.02 Purchase Order.** Except as otherwise approved by Supplier, Reseller shall initiate all Purchase Orders via Supplier's Website. By placing a Purchase Order, Reseller makes an offer to purchase Products pursuant to the terms and conditions of this Agreement, the Website Terms of Use and the Purchase Order transaction terms, and on no other terms. Except with respect to the Purchase Order transaction terms, any variations made to the terms and conditions of this Agreement by Reseller in any Purchase Order are void and have no effect.

(a) Minimum Purchase Order Quantities. Reseller shall be required to purchase minimum quantities of Products as Supplier shall specify on its Website from time to time, but not less than:

(i) **Practitioner Resellers:** a minimum quantity of six (6) of each available Product; and

(ii) **Health Care Company Resellers:** a minimum quantity of twelve (12) of each available Product.

(b) Special Orders. Special Orders of Product and quantities require a minimum lead time of 4-6 weeks for processing and delivery.

**Section 8.03 Supplier's Right to Accept or Reject Purchase Orders.** Supplier has the right, in its sole discretion, to accept or reject any Purchase Order, in whole in part. Supplier may accept any Purchase Order by confirming the order (whether by written confirmation, invoice or otherwise) or by delivering such Products, whichever occurs first. No Purchase Order is binding on Supplier unless accepted by Supplier as provided in this Agreement.

**Section 8.04 Cancellation of Purchase Orders.**

(a) Supplier may, in its sole discretion, without liability or penalty, cancel any Purchase Order, in whole or in part, placed by Reseller and accepted by Supplier:

- (i) if Supplier discontinues its sale of Products or reduces or allocates its inventory of Products;
- (ii) if Supplier determines that Reseller is in violation of its payment obligations under or is in material breach of this Agreement; or
- (iii) pursuant to Supplier's rights under **Section 10.04**.

**ARTICLE IX  
SHIPMENT AND DELIVERY**

**Section 9.01 Shipment.** Unless otherwise agreed to by the Parties, Reseller shall select the method of shipment on Supplier's Website. Supplier may, in its sole discretion, without liability or penalty, make partial shipments of Products to Reseller. Each shipment will constitute a separate sale, and Reseller shall pay for the units shipped, whether such shipment is in whole or partial fulfillment of a Purchase Order.

**Section 9.02 Delivery.** Unless expressly agreed to by the Parties, Supplier shall deliver the Products to the Delivery Point, using Supplier's (or manufacturer's, as the case may be) standard methods for packaging and shipping such Products. All prices are FOB Reseller's destination.

**Section 9.03 Supplier Not Liable.** Any time quoted for delivery is an estimate only. Supplier is not liable for or in respect of any loss or damage arising from any delay in filling any order, failure to deliver or delay in delivery. No delay in the shipment or delivery of any Product relieves Reseller of its obligations under this Agreement, including without limitation accepting delivery of any remaining installment(s) of Products.

**Section 9.04 Inspection.** Reseller shall inspect units of products received under this Agreement within 48 hours of receipt ("**Inspection Period**") of such units and either accept or, if any such units are nonconforming or in excess of the Products ordered, reject such units. Reseller will be deemed to have accepted the units unless it notifies Supplier in writing of any nonconforming Product or excess Product during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Supplier. If Reseller timely notifies Supplier of any nonconforming Product or excess Product, Supplier shall determine, in its sole discretion, whether the units are nonconforming goods or excess Product. If Supplier determines that the units are nonconforming goods or excess Products, it shall either, in its sole discretion:

(a) if such units are nonconforming goods, (i) replace such nonconforming goods with conforming Products, or (ii) refund the Price for such nonconforming goods, together with all shipping and handling expenses incurred by Reseller in connection therewith; or

(b) if such units are excess goods, refund the price for such excess Products together with all related shipping and handling expenses incurred by Reseller in connection therewith.

Reseller shall contact Supplier for instructions and approval of any return shipment. Upon receiving instructions and approval, Reseller shall ship, at Supplier's expense and risk of loss, all nonconforming goods and excess Products to Supplier's facility. If Supplier exercises its option to replace nonconforming goods, Supplier shall, after receiving Reseller's shipment of nonconforming goods, ship to Reseller, at Supplier's expense and risk of loss, the replaced units to the Delivery destination designated by Reseller.

Reseller acknowledges and agrees that the remedies set forth in **Section 9.04(a)** and **Section 9.04(b)** are Reseller's exclusive remedy for the delivery of nonconforming goods or excess Products, subject to Reseller's rights under **Section 16.05** with respect to any nonconforming goods for which Reseller has accepted delivery under this **Section 9.04**.

**Section 9.05 Limited Right of Return.** Except as provided under **Section 9.04** and **Section 16.05**, all sales of Products to Reseller under this Agreement are made on a one-way basis and Reseller has no right to return Products purchased under this Agreement.

**Section 9.06 Title and Risk of Loss.**

(a) Title to units shipped under any Purchase Order passes to Reseller upon Supplier's delivery of the units to the carrier at Supplier's dock.

(b) Risk of loss to units shipped under any Purchase Order passes to Reseller upon Supplier's delivery of such Products to the carrier at Supplier's dock.

**ARTICLE X  
PRICE AND PAYMENT**

**Section 10.01 Price.** Reseller shall purchase the Products from Supplier at the prices set forth in Supplier's Website or reseller price list in effect at the time that the Supplier accepts the related Purchase Order ("**Prices**").

**Section 10.02 Shipping Charges, Insurance and Taxes.** Reseller shall pay for shipping charges and any insurance costs. All Prices are exclusive of all sales, use and

excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Reseller under this Agreement. Reseller shall be responsible for all such charges, costs and taxes; provided, that, Reseller shall not be responsible for any taxes imposed on, or with respect to, Supplier's income, revenues, gross receipts, Personnel or real or personal property or other assets.

**Section 10.03 Payment Terms.** Reseller shall prepay all standard Purchase Orders at Supplier's Website. For special orders (large or custom orders), Supplier may, at its sole discretion, extend additional terms requiring a down payment to initiate the special order and the balance paid in full before or at the time of shipment. Special order terms shall be listed on Supplier's Price list, which may be withdrawn or amended at any time without notice to Reseller at Supplier's sole discretion. Product may not be shipped or shipment delayed without the required advance payment(s).

**Section 10.04 Unsatisfactory Credit Status.** Supplier may request Reseller to furnish Supplier with statements evidencing Reseller's financial condition as Supplier may, from time to time, reasonably request, and shall notify Supplier immediately of any and all events that may have a material adverse effect on Reseller's business or financial condition. If Supplier determines in its sole discretion that Reseller's financial condition or creditworthiness is inadequate or unsatisfactory, then in addition to Supplier's other rights, Supplier may without liability or penalty, take any of the following actions:

- (a) on written Notice, modify the payment terms for outstanding and future purchases, including requiring Reseller to pay cash in advance;
- (b) cancel any previously accepted Purchase Orders;
- (c) delay any further shipment of Products to Reseller;
- (d) terminate this Agreement in accordance with **Section 14.03**; or
- (e) any combination of the above.

No actions taken by Supplier under this **Section 10.04** (nor any failure of Supplier to act under this **Section 10.04**) constitute a waiver by Supplier of any of its rights to enforce Reseller's obligations under this Agreement including the obligation of Reseller to make payments as required under this Agreement.

**Section 10.05 Invoice Disputes.** Reseller shall notify Supplier in writing of any dispute with any Purchase Order invoice (along with a reasonably detailed description of the dispute) within five (5) business days from the date of Reseller's receipt of such invoice. Reseller will be deemed to have accepted all invoices for which Supplier does not receive timely notification of disputes, and shall pay all undisputed amounts due under such invoices within the period set forth in **Section 10.03**. The Parties shall seek to resolve all such disputes expeditiously and in good faith. Notwithstanding anything to the

contrary, Reseller shall continue performing its obligations under this Agreement during any such dispute, including, without limitation, Reseller's obligation to pay all due and undisputed invoice amounts.

**Section 10.06 Late Payments.** Except for invoiced payments that Reseller has successfully disputed, Reseller shall pay interest on all late payments, calculated daily and compounded monthly, at the highest rate permissible under applicable law. Reseller shall also reimburse Supplier for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at Law (which Supplier does not waive by the exercise of any rights under this Agreement), Supplier may suspend the delivery of any Products if Reseller fails to pay any undisputed amounts when due under this Agreement and such failure continues for fifteen (15) days following written notice thereof.

**Section 10.07 Security Interest.** Reseller hereby grants Supplier a security interest in all products purchased under this Agreement (including Products, nonconforming goods and excess Products) to secure any Reseller payment obligations under this Agreement. Reseller acknowledges that the security interest granted under this **Section 10.07** is a purchase-money security interest under California law. Supplier may file a financing statement for such security interest and Reseller shall execute any such statements or other documentation necessary to perfect Supplier's security interest in such products.

**Section 10.08 No Set-off Right.** Reseller shall not withhold payment of any amounts due and payable under this Agreement by reason of any set-off of any claim or dispute with Supplier, whether relating to Supplier's breach, bankruptcy or otherwise.

## **ARTICLE XI RESALE OF THE PRODUCTS**

**Section 11.01 Credit Risk on Resale to End Users.** Reseller shall be responsible for all credit risks with respect to, and for collecting payment for, all products (including Products) sold to third parties (including End Users), whether or not Reseller has made full payment to Supplier for such products. The inability of Reseller to collect the purchase price for any product shall not affect Reseller's obligation to pay Supplier for any Product.

**Section 11.02 Resale Prices.** Reseller shall unilaterally establish its own resale prices and terms with respect to products it sells, including Products.

**Section 11.03 Minimum Advertised Price Policy (MAP Policy).** We recognize that resellers invest substantial time and resources to deliver superior customer service and Product presentation. To support our resellers' efforts, Bernd Friedlander, LLC wishes to establish policies that allow resellers to earn the profits necessary to maintain the high level of customer satisfaction. To protect the investment of Reseller and the reputation of the Dr. Bernd Friedlander brand, we have unilaterally adopted the MINIMUM ADVERTISED PRICE POLICY ("MAP Policy") set forth on Attachment 1 annexed hereto. You agree to abide by this MAP Policy.

## **ARTICLE XII COMPLIANCE WITH LAWS**

**Section 12.01 General Compliance with Laws Covenant.** Reseller shall comply with all laws applicable to its business and the resale of Products.

**Section 12.02 Export Regulation Covenant.** The Products and any other products purchased under this Agreement are not intended for export. Reseller shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release any Products to any jurisdiction or country to which, or any party to whom, the export, re-export or release of any the Products is prohibited by applicable law. Reseller is responsible for any breach of this **Section 12.02** by its, and its successors' and permitted assigns', affiliates, employees, officers, directors, customers, agents, distributors, resellers or vendors.

## **ARTICLE XIII INTELLECTUAL PROPERTY RIGHTS**

**Section 13.01 Ownership.** Reseller acknowledges and agrees that:

- (a) any and all Supplier's Intellectual Property Rights are the sole and exclusive property of Supplier or its licensors;
- (b) Reseller shall not acquire any ownership interest in any of Supplier's Intellectual Property Rights under this Agreement;
- (c) any goodwill derived from the use by Reseller of Supplier's Intellectual Property Rights inures to the benefit of Supplier or its licensors, as the case may be;
- (d) if Reseller acquires any Intellectual Property Rights in or relating to any product (including any Product) purchased under this Agreement (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Supplier or its licensors, as the case may be, without further action by either of the Parties; and

(e) Reseller shall use Supplier's Intellectual Property Rights solely for the purposes of performing its obligations under this Agreement and only in accordance with this Agreement and the instructions of Supplier.

**Section 13.02 Supplier's Trademark License Grant.** This Agreement does not grant either Party the right to use the other Party's or their affiliates' Trademarks except as reasonably necessary to exercise their rights and perform their obligations under this Agreement. Subject to Supplier's trademark policies, which may be amended from time to time in Supplier's sole discretion, and the terms and conditions of this Agreement, Supplier hereby grants to Reseller a non-exclusive, non-transferable and non-sublicensable license to use Supplier's Trademarks in the Territory during the Term and the Post-term Resale Period solely on or in connection with the promotion, advertising and resale of the Products. Reseller will promptly discontinue the display or use of any Trademark to change the manner in which a Trademark is displayed or used with regard to the Products when requested by Supplier.

**Section 13.03 Marketing and Resale Right Only.** Reseller is authorized to market and distribute the Products only in the form and packaging as delivered by Supplier to Reseller in accordance with the terms of this Agreement. Other than the express licenses granted by this Agreement, Supplier grants no right or license to Reseller by implication, estoppel or otherwise to the Products or any Intellectual Property Rights of Supplier.

**Section 13.04 Prohibited Acts.** Reseller shall not:

- (a) take any action that interferes with any of Supplier's rights in or to Supplier's Intellectual Property Rights, including Supplier's ownership or exercise thereof;
- (b) challenge any right, title or interest of Supplier in or to Supplier's Intellectual Property Rights;
- (c) make any claim or take any action adverse to Supplier's ownership of Supplier's Intellectual Property Rights;
- (d) register or apply for registrations, anywhere in the world, for Supplier's Trademarks or any other Trademark that is similar to Supplier's Trademark[s] or that incorporates Supplier's Trademarks [in whole or in confusingly similar part];
- (e) use any mark, anywhere, that is confusingly similar to Supplier's Trademarks;
- (f) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the products purchased under this Agreement (including Products) or any Supplier Trademark;

(g) misappropriate any of Supplier's Trademarks for use as a domain name without prior written consent from Supplier; and

(h) alter, obscure or remove any of Supplier's Trademarks or trademark or copyright notices or any other proprietary rights notices placed on the products purchased under this Agreement (including Products), marketing materials or other materials that Supplier may provide.

**Section 13.05 Supplier's Trademark Notices.** Reseller shall ensure that all Products sold by Reseller and all related quotations, specifications and descriptive literature, and all other materials carrying Supplier's Trademark, be marked with the appropriate trademark notices in accordance with Supplier's instructions.

**Section 13.06 No Continuing Rights.** On expiration or earlier termination of this Agreement, subject to Reseller's rights under the Post-term Resale Period, Reseller will immediately cease all display, advertising, promotion and use of all of Supplier's Trademarks and will not thereafter use, advertise, promote or display any trademark, trade name or product designation or any part thereof that is similar to or confusing with Supplier's Trademarks or with any trademark, trade name or product designation associated with Supplier or any Product.

## **ARTICLE XIV TERM; TERMINATION**

**Section 14.01 Initial Term.** The term of this Agreement commences on [the Effective Date and continues for a period of one (1) year, unless and until terminated as provided under this Agreement (the "**Initial Term**").

**Section 14.02 Renewal Term.** Upon expiration of the Initial Term, this Agreement automatically renews for additional successive one-year terms unless and until either Party provides written Notice of nonrenewal at least ninety (90) days prior to the end of the then-current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"), or unless and until sooner terminated as provided under this Agreement. Any renewal is subject to and conditioned upon Reseller's continued qualification to act as a Reseller for Supplier and Reseller shall provide Supplier with all such documents and things as Supplier may request in order for Supplier to confirm Reseller's qualifications. If the Term is renewed for any Renewal Term(s) pursuant to this **Section 14.02**, the terms and conditions of this Agreement during each such Renewal Term are the same as the terms in effect immediately prior to such renewal, subject to any change in Prices payable for the Products and payment terms during the applicable Renewal Term as set forth in **Article X** or changes to or in availability of the Products as set forth in **Section 7.02**. In the event either Party provides timely Notice of its intent not

to renew this Agreement, then, unless earlier terminated in accordance with its terms, this Agreement terminates on the expiration of the then-current Term.

**Section 14.03 Supplier's Right to Terminate.** Supplier may terminate this Agreement upon written Notice to Reseller:

- (a) if Reseller fails to pay any amount when due under this Agreement ("**Payment Failure**") and such failure continues for thirty (30) days after Reseller's receipt of written Notice of nonpayment;
- (b) if within any three month period, two (2) or more Payment Failures occur;
- (c) if Reseller breaches any provision of this Agreement (other than its obligation to pay any amount under this Agreement when due), and either the breach cannot be cured or, if the breach can be cured, it is not cured by Reseller within [NUMBER] days after Reseller's receipt of written Notice of such breach;
- (d) pursuant to and in accordance with[**Section 3.01**, and[**Section 10.04**; or
- (e) if Reseller becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency Law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property, or is generally unable to pay its debts as they become due;
- (f) if Reseller sells, transfers or disposes of all or substantially all of its assets, or merges or consolidates with any other entity, unless Reseller is the surviving entity and has a net worth greater than or equal to its net worth immediately prior to the merger or consolidation.

**Section 14.04 Reseller's Right to Terminate.** Reseller may terminate this Agreement upon written Notice to Supplier:

- (a) if Supplier breaches any material provision of this Agreement and either the breach cannot be cured or, if the breach can be cured, it is not cured by Supplier within thirty (30) days after Supplier's receipt of written Notice of such breach;
- (b) if Supplier becomes insolvent or files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency Law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver or custodian for a substantial part of its property, or is generally unable to pay its debts as they become due;
- (c) in the event of a Force Majeure Event affecting Supplier's performance under this Agreement for more than ninety (90)[consecutive days.

**Section 14.05 Effect of Expiration or Termination.**

(a) Expiration or termination of the Term will not affect any rights or obligations that:

(i) are to survive the expiration or earlier termination of this Agreement pursuant to **Section 18.03**; and

(ii) were incurred by the Parties prior to such expiration or earlier termination; provided that all indebtedness of Reseller to Supplier of any kind shall become immediately due and payable on the effective date of expiration or earlier termination of the Term.

(b) Any Notice of termination under this Agreement automatically operates as a cancellation of any deliveries of Products to Reseller that are scheduled to be made subsequent to the effective date of termination, whether or not any orders for such Products had been accepted by Supplier. With respect to any Products that are still in transit upon termination of this Agreement, Supplier may require, in its sole and absolute discretion that all sales and deliveries of such Products be made on either a cash-only or certified check basis.

(c) Subject to **Section 14.06**, upon the expiration or earlier termination of this Agreement, Reseller shall promptly:

(i) return to Supplier the NFR Products;

(ii) cease to represent itself as Supplier's authorized reseller with respect to the Products, and shall otherwise desist from all conduct or representations that might lead the public to believe that Reseller is authorized by Supplier to sell the Products;

(iii) return to Supplier and/or destroy, as Supplier shall direct, all documents and tangible materials (and any copies) containing, reflecting, incorporating or based on Supplier's Confidential Information;

(iv) permanently erase all of Supplier's Confidential Information from its computer systems, except for copies that are maintained as archive copies on its disaster recovery and/or information technology backup systems. Reseller shall destroy any such copies upon the normal expiration of its backup files; and

(v) certify in writing to Supplier that it has complied with the requirements of this clause.

(d) Subject to **Section 14.05(a)**, the Party terminating this Agreement, or in the case of the expiration of this Agreement, each Party, shall not be liable to the other Party for any damage of any kind (whether direct or indirect) incurred by the other Party by reason of the expiration or earlier termination of this Agreement.

**Section 14.06 Post-term Resale Period.** Subject to **Section 14.07**, upon the expiration or earlier termination of this Agreement, except for termination by Supplier

under **Section 14.03(a)**, Reseller may, in accordance with the applicable terms and conditions of this Agreement, sell off its existing inventories of Products for a period of six (6) months following the last day of the Term (the "**Post-term Resale Period**").

**Section 14.07 End of Term Purchase Restrictions.** During the last six months of the Term, Reseller shall purchase Products in quantities that are no greater than quantities in an amount that Reseller reasonably determines will be necessary to meet End User demand in that period.

## **ARTICLE XV CONFIDENTIALITY**

**Section 15.01 Protection of Confidential Information.** From time to time during the Term, either Party (as the "**Disclosing Party**") may disclose or make available to the other Party] (as the "**Receiving Party**") information about its business affairs, goods and services, forecasts, confidential information and materials comprising or relating to Intellectual Property Rights, trade secrets, third-party confidential information and other sensitive or proprietary information, as well as the terms of this Agreement, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure and as established by documentary evidence:

(a) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this **Article XV** by the Receiving Party or any of its Representatives;

(b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information;

(c) was known by or in the possession of the Receiving Party or its Representatives prior to being disclosed by or on behalf of the Disclosing Party;

(d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information; or

(e) is required to be disclosed pursuant to applicable Law. The Receiving Party shall:

(i) protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;

(ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations under this Agreement; and

(iii) not disclose any such Confidential Information to any Person, except to the Receiving Party's representatives who need to know the Confidential Information to assist the Receiving Party, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

The Receiving Party shall be responsible for any breach of this **Article XV** caused by any of its Representatives. On the expiration or earlier termination of this Agreement or at any time during or after the Term, at the Disclosing Party's written request, the Receiving Party and its Representatives shall, pursuant to **Section 14.03**, promptly return/destroy all Confidential Information and copies thereof that it has received under this Agreement.

## **ARTICLE XVI REPRESENTATIONS AND WARRANTIES**

**Section 16.01 Reseller's Representations and Warranties.** Reseller represents and warrants to Supplier that:

(a) it is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement;

(b) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement and to perform its obligations under this Agreement;

(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by Reseller; and

(d) when executed and delivered by each of Supplier and Reseller, this Agreement will constitute the legal, valid and binding obligation of Reseller, enforceable against Reseller in accordance with its terms.

**Section 16.02 Supplier's Representations and Warranties.** Supplier represents and warrants to Reseller that:

(a) it is a limited liability company duly organized, validly existing and in good standing in the jurisdiction of its formation;

(b) it is qualified and licensed to do business and in good standing in every jurisdiction where such qualification and licensing is required for purposes of this Agreement;

(c) it has the full right, power and authority to enter into this Agreement, to grant the rights and licenses granted under this Agreement and to perform its obligations under this Agreement;

(d) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by Supplier; and

(e) when executed and delivered by each of Supplier and Reseller, this Agreement will constitute the legal, valid and binding obligation of Supplier, enforceable against Supplier in accordance with its terms.

**Section 16.03 Product Warranty.** Except as otherwise set forth in writing by Supplier, no warranty is extended to Reseller or an End User under this Agreement. Supplier may make certain limited warranties regarding the Products (excluding NFR Products) solely to and for the benefit of the End User; provided, nothing herein shall obligate or require Supplier to make a warranty of any kind to End Users or Reseller. In the event Supplier makes certain limited warranties regarding the Products to End Users, either:

(a) Supplier will include a written warranty statement with the Product; or

(b) Reseller shall direct its End Users to the limited-warranty statement for Supplier-branded Products, available at Supplier's Website, which may be changed by Supplier at any time in its sole discretion.

This **Section 16.03** shall not apply to NFR Products.

**Section 16.04 Warranty Limitations.** The warranties under **Section 16.03** do not apply where the Product:

(a) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Supplier;

(b) has been reconstructed, repaired or altered by Persons other than Supplier or its authorized Representative; or

(c) has been used with any other product that has not been previously approved in writing by Supplier.

**Section 16.05 Reseller's Exclusive Remedy.** During the Warranty Period, with respect to any Defective Goods:

(a) Supplier shall in its sole discretion and at its expense (subject to **Section 14.03(b)** and **Section 14.03(c)**), (i) repair or replace such defective goods, or (ii) credit or refund the Price of such defective goods, less any applicable discounts, rebates or credits;

(b) Reseller or End User shall ship, at its expense and risk of loss, such defective goods to Supplier's facility; and

(c) If Supplier exercises its option to replace, Supplier shall, after receiving the shipment of such defective goods, ship to Reseller or the End User, at Supplier's expense and risk of loss, the replaced Product to the Delivery destination designated by Reseller/End User.

Reseller has no right to return for replacement, credit or refund any Product except as set forth in this **Section 16.05** (or if otherwise applicable, **Section 9.04**). In no event shall Reseller alter or replace any Product, in whole or in part, either itself or by or through any third party.

**THIS Section 16.05 SETS FORTH RESELLER'S SOLE REMEDY AND SUPPLIER'S ENTIRE LIABILITY FOR ANY BREACH OF ANY WARRANTY SET FORTH IN THIS AGREEMENT.**

**Section 16.06 Warranties Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN **Section 16.03**, SUPPLIER MAKES NO WARRANTY WHATSOEVER, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR OF TITLE OR AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

**Section 16.07 Third Party Products.** Products manufactured by a third party ("**Third Party Products**") may contain, be contained in, incorporated into, attached to or packaged together with the products purchased by Reseller under this Agreement. In that event, Third Party Products are not covered by the warranty in **Section 16.03**. For the avoidance of doubt, Supplier makes no representations or warranties with respect to any Third Party Products.

## **ARTICLE XVII LIMITATION OF LIABILITY**

**Section 17.01 No Liability for Consequential or Indirect Damages.** EXCEPT FOR OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY OR ITS REPRESENTATIVES SHALL BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE,

ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (a) WHETHER SUCH DAMAGES WERE FORESEEABLE, (b) WHETHER OR NOT THE OTHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (c) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

**Section 17.02 Maximum Liability for Direct Damages.** EXCEPT FOR LIABILITY FOR BREACH OF CONFIDENTIALITY, OR LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL SUPPLIER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SUPPLIER PURSUANT TO THIS AGREEMENT IN THE ONE (1) YEAR PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$100, WHICHEVER IS GREATER.

## **ARTICLE XVIII MISCELLANEOUS**

**Section 18.01 Further Assurances.** Upon Supplier's reasonable request, Reseller shall, at Supplier's sole cost and expense, execute and deliver all such further documents and instruments, and take all such further acts, necessary to give full effect to this Agreement.

**Section 18.02 Entire Agreement.**

(a) Subject to **Article IV**, this Agreement, including and together with the Purchase Order Transaction Terms and Supplier's Website Terms of Use, and all related exhibits, schedules, attachments and appendices constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein and therein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

**Section 18.03 Survival.** Subject to the limitations and other provisions of this Agreement, (a) the representations and warranties of the Parties contained herein and related exceptions, limitations or qualifiers shall survive the expiration or earlier termination of this Agreement for a period of one (1) year after such expiration or termination; and (b) as well as any other provision that, in order to give proper effect to its intent, should survive such expiration or termination, shall survive the expiration or earlier termination of this Agreement for the period specified therein, or if nothing is

specified for a period of one (1) year after such expiration or termination. No lawsuit or other action based upon or arising in any way out of this Agreement may be brought by either Party after the expiration of the applicable survival period; provided, however, that any claims asserted in good faith with reasonable specificity and in writing by notice prior to the expiration of the applicable survival period is not thereafter barred by the expiration of the relevant period, and such claims survive until finally resolved.

**Section 18.04 Notices.** Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "Notice") in writing and addressed to the other Party at its address set forth herein (or to such other address that the receiving Party may designate from time to time in accordance with this section). Each Party shall deliver all notices by personal delivery, nationally recognized overnight courier or certified or registered mail (in each case, return receipt requested, postage prepaid).

**Section 18.05 Headings.** The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

**Section 18.06 Severability.** If any term or provision of this Agreement is deemed by a court of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement.

**Section 18.07 Amendment and Modification.** No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

**Section 18.08 Waiver.**

- (a) No waiver under this Agreement is effective unless it is in writing and signed by an authorized representative of the Party waiving its right.
- (b) Any waiver authorized on one occasion is effective only in that instance and only for the purpose stated, and does not operate as a waiver on any future occasion.
- (c) None of the following constitutes a waiver or estoppel of any right, remedy, power, privilege or condition arising from this Agreement:
  - (i) any failure or delay in exercising any right, remedy, power or privilege or in enforcing any condition under this Agreement; or
  - (ii) any act, omission or course of dealing between the Parties.

**Section 18.09 Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise. Notwithstanding the previous sentence, the Parties intend that Reseller's rights under **Section 16.05** are Reseller's exclusive remedies for the events specified therein.

**Section 18.10 Equitable Remedies.** Each Party acknowledges and agrees that (a) a breach or threatened breach by such Party of any of its obligations under **Article XV** would give rise to irreparable harm to the other Party for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by such Party of any such obligations, the other Party shall, in addition to any and all other rights and remedies that may be available to such Party at law, at equity or otherwise in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy. Each Party agrees that such Party will not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this **Section 18.10**.

**Section 18.11 Assignment.** Reseller may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Supplier. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves the assigning or delegating Party of any of its obligations under this Agreement. Supplier may assign any of its rights or delegate any of its obligations to any Affiliate or to any Person acquiring all or substantially all of Supplier's assets.

**Section 18.12 Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties and their respective permitted successors and permitted assigns.

**Section 18.13 No Third Party Beneficiaries.** This Agreement benefits solely the parties to this Agreement and their respective permitted successors and permitted assigns and nothing in this Agreement, express or implied, confers on any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 18.14 Choice of Law.** This Agreement, including all exhibits, schedules, attachments and appendices attached hereto and thereto, and all matters arising out of or relating to this Agreement, are governed by, and construed in accordance with, the laws of the State of California, United States of America, without regard to the conflict of laws provisions thereof. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement and is hereby excluded.

**Section 18.15 Choice of Forum.** Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement and all contemplated transactions in any forum other than the courts of competent jurisdiction locate in San Mateo County, California.

**Section 18.16 Counterparts and Electronic Copies/Signatures.** This Agreement may be executed in counterparts, using facsimile (electronic) copies and signatures, each of which is deemed an original, but all of which together shall be deemed to be one and the same instrument and having the same legal effect as an original signed and printed copy of this Agreement.

**Section 18.17 Force Majeure.** No Party shall be liable or responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other Party under this Agreement), when and to the extent such failure or delay is caused by or results from acts beyond the affected Party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities (each a "**Force Majeure Event**").

[SIGNATURES ARE PROVIDED ON THE TITLE PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date on the title page of this Agreement.

Enclosures:

**Attachment 1:** Minimum Advertised Price Policy

**ATTACHMENT 1**  
to  
Product Reseller Agreement

**Minimum Advertised Price Policy**

**Bernd Friedlander, LLC**  
Latest Update: 5-29-2013

Reseller advertising and sales practices that promote Bernd Friedlander, LLC products primarily on the basis of price could be detrimental to resellers' service and support efforts and Bernd Friedlander, LLC's competitive position. Such activities can be harmful to Bernd Friedlander, LLC's brand, reputation and competitiveness, and allow some resellers to take advantage of the service and support efforts of others. Bernd Friedlander, LLC believes that these practices are unfair and to discourage such efforts, Bernd Friedlander, LLC has established this MAP Policy.

Official Policy and Guidelines

1. Bernd Friedlander, LLC, in its unilateral discretion, will not do business with any reseller, as to the Products covered by this MAP Policy, if that reseller intentionally advertises any MAP Product below its MAP price.
2. Bernd Friedlander, LLC reserves the right, in its unilateral discretion, to take other action with respect to any reseller that violates this MAP Policy.
3. The MAP Policy will be enforced by Bernd Friedlander, LLC in its sole discretion.
4. Bernd Friedlander, LLC recognizes that any authorized Bernd Friedlander, LLC account can make its own decisions to advertise and sell any Bernd Friedlander, LLC product at any price it chooses without consulting or advising Bernd Friedlander, LLC. Bernd Friedlander, LLC similarly has the right to make its own independent decision regarding product allocations and reseller participation as a member of the Bernd Friedlander, LLC Authorized Reseller Program – at any time.
5. Bernd Friedlander, LLC will maintain an updated Price list of those products that will fall under this MAP Policy “MAP Products.” Bernd Friedlander, LLC reserves the right to update or modify this list at any time.
6. All Products listed will have a MAP retail price. Listing a price other than the MAP retail price next to the featured MAP Product in any advertising will be viewed as a violation of this MAP Policy. This MAP Policy applies to all advertisement of MAP Products in any and all media, including, without limitation, flyers, posters, coupons, mailers, inserts, newspapers, magazines catalogs, mail order catalogs, internet or similar electronic media including websites, forums, email newsletters, email solicitations, television, radio, and public signage. Such website features as “Click for price”, automated “bounce – back” pricing e-mails, pre-formatted e-mail responses, forms, automatic price display for any items prior to being placed in a customer's shopping cart, and other similar features are considered to be communications initiated by the reseller (rather than by the customer) and this constitutes “advertising” under this MAP Policy. This MAP Policy also applies to any activity which Bernd Friedlander, LLC determines, in its sole discretion, is designed or intended to circumvent the intent of this MAP Policy, such as solicitations for ‘group purchases’ and the like.

7. It shall not be a violation of this MAP Policy to advertise in general that the reseller has “the lowest prices” or will match or beat its competitors’ prices, or to use similar phrases; so long as the reseller does not include any advertised price below MAP and otherwise complies with this MAP Policy.
8. From time to time, Bernd Friedlander, LLC may permit resellers to advertise MAP Products at prices lower than the MAP retail price. In such events, Bernd Friedlander, LLC reserves the right to modify or suspend the MAP retail price with respect to the affected products for a specified period of time by providing advance notice to all resellers of such changes.
9. From time to time Bernd Friedlander, LLC may offer a direct manufacturer’s rebate to customers. In such events, it shall not be a violation of this MAP Policy to advertise the availability of the manufacturer’s rebate, provided that (a) the advertisement include a MAP-compliant price, the rebate amount, and the net price after manufacturer’s rebate in the same type size and style; (b) an asterisk is placed next to the net price after manufacturer’s rebate; and (c) the “\*After manufacturer’s rebate” appears in the same area of the advertisement as the advertised product.
10. Where Bernd Friedlander, LLC products are bundled with or sold as part of a package that includes other products (whether or not manufactured by Bernd Friedlander, LLC), it shall be a violation of this MAP Policy to sell or advertise the bundle (or package) at a price that: (a) is lower than the total Minimum Advertised Price of the Bernd Friedlander, LLC product or (b) violates the letter or spirit of the MAP Policy. It shall be a violation of this MAP Policy if products are bundled with or sold as part of a package that includes products not pre-approved by Bernd Friedlander, LLC. Pre-approved products have been tested and approved by Bernd Friedlander, LLC engineers to ensure the product is up to Bernd Friedlander, LLC standards. Ask your Bernd Friedlander, LLC sales representative for a list of approved products.
11. It shall be a violation of this MAP Policy to include in any advertising for Bernd Friedlander, LLC Products any additional discount, coupon, gift card, or incentive (whether in the form of a special event, promotion, term of doing business or otherwise) that translates into an immediate price reduction, where the cumulative effect would be to reduce the advertised price of any MAP Product below MAP. Advertising that includes an additional discount, coupon, gift card, points, or any other incentive for future purchases (regardless of whether the future purchases is of a Bernd Friedlander, LLC product) shall be evaluated under the same guidelines as described in Section 9 regarding product bundling. For example, a gift card redeemable on a future purchase would be considered an “other product” under Section 9. This Section 10 shall not apply to any manufacturer’s rebate from Bernd Friedlander, LLC on Bernd Friedlander, LLC Products or its partners’ products.
12. It shall not be a violation of this MAP Policy to advertise that a customer may “call for price” or “email for price”, or to use similar language, specifically with respect to Bernd Friedlander, LLC Products, so long as no price is listed.
13. If a reseller with multiple store locations violates this MAP Policy at any particular store location, the Bernd Friedlander, LLC will consider this to be a violation by all of the reseller’s locations.
14. Although resellers remain free to establish their own resale prices, Bernd Friedlander, LLC reserves the right to cancel all orders and indefinitely refuse to accept any new orders from any resellers following Bernd Friedlander, LLC’s verification that such reseller has advertised any MAP Products at a net retail sales price less than the then-current MAP retail price

established by Bernd Friedlander, LLC, or if reseller has violated this policy in any other way.

15. Bernd Friedlander, LLC's sales representatives are NOT permitted to discuss this Policy or make any agreements or assurances with respect to Bernd Friedlander, LLC's Policy regarding reseller advertising or pricing. This also includes any consumer program or promotion that affects the below-listed MAP Products.

{End of Attachment 1 }